

NO NEW BECKER TRIAL LIKELY ON OATH OF NEGRO

Justice Weeks Expected to Hand Down His Decision Today.

WIFE FAILS TO SHOW ANY DISAPPOINTMENT

Charles Becker is not likely to get a new trial on the ground that James Marshall, a young negro, who testified in the second trial last May, repudiated in Philadelphia testimony that Becker talked to Jack Rose at Seventh and 124th street nineteen days before Herman Rosenthal was assassinated.

Supreme Court Justice Bartow S. Weeks, who heard argument yesterday in the Criminal Branch of the Supreme Court on the motion for a new trial made by Martin T. Manton, Becker's counsel, made it sufficiently plain that Marshall's Philadelphia affidavit does not contain the testimony and does not come within the legal requirements for newly discovered evidence. Justice Weeks frowned upon the methods employed in obtaining the so-called repudiation and characterized the affidavit as an "ingenious evasion of direct contradiction."

It was obvious that Justice Weeks was inclined to deny a new trial. From the bench, that he could not grant a new trial on such grounds, but he announced that he would receive affidavits and documents from District Attorney and give the case brief consideration before handing down a decision. It is expected he will announce his decision to-day.

Admittance Offered.

In support of the State's contention that Marshall has never actually contradicted the testimony he gave against Becker and that he did not understand that he was repudiating his testimony when he signed the Philadelphia affidavit, District Attorney Perkins offered three affidavits made by Marshall, two written from Chicago by Marshall, the third last summer, and an affidavit from Assistant District Attorney Frederick J. Groehl.

The affidavits by Marshall were made on April 11, 1914, February 14, 1915, and February 25, 1915. They assert that Becker talked with a man, who was later identified as Jack Rose, on the night of June 27, 1912, and that Marshall never repudiated or intended to repudiate this fact.

The letters were written on July 27, 1914, and August 13, 1914, to warn the District Attorney's office that attempts were being made to bribe or frighten him into making a statement in Becker's behalf.

Mrs. Becker was present at the hearing. If she was disappointed over the failure of her husband's counsel to make Justice Weeks disbelieve the alleged repudiation she did not show it. She smiled often as she chatted with friends and appeared to be in excellent spirits.

Manton's Argument. In opening his argument Mr. Manton referred to the importance of the meeting between Becker and Rose, the fact that Marshall had repudiated the testimony that the whole case hinged on the ability of the State to establish by untainted witnesses that such a meeting took place. The Court of Appeals, Mr. Manton said, ruled that without the conference being proved there was no case against Becker.

"I hardly go so far as that, does," commented Justice Weeks.

Mr. Manton replied that the Court of Appeals ruled to just that effect. "The conference was so important that it could not rest on the testimony of an accomplice," said Mr. Manton. "A corroborator is as necessary to make it go as a corroborator is to make it admissible."

Mr. Manton took up affidavits made by Otto Avers, driver of the automobile in which Becker was shot, and by Henry Reinberger, who frequently used by Becker, and informed the Justice that Avers and Reinberger had sworn that Becker was not in the car on the night in question.

"Were these men called at the second trial?" asked the Justice. "They were," said Mr. Manton. "They were called by the State, they were in the employ of the District Attorney's office."

"If that be true they were manifestly using your power to call," returned the Justice.

Reads From Affidavit. Mr. Manton then read extracts from the repudiating affidavit made by Marshall in Philadelphia.

"Does the affidavit state that Marshall did not see Becker in conversation that night?" interrupted Justice Weeks. "No," said Mr. Manton.

"Does it state that neither of the men saw the man he afterwards knew as Rose?" asked the Justice.

"Yes, in this way—," began Mr. Manton, who then started to explain to the Justice that the affidavit was a very strong presentation of facts to move to grant a new trial on the ground of newly discovered evidence, an ingenious evasion of a direct contradiction of his testimony at the trial.

"Are you going to decide now?" inquired Mr. Manton.

"No," that would be improper. I will take some time, and the decision will be given in ample time to allow you to in corporate it in your argument for a reversal of the judgment before the Court of Appeals."

Denials by Negro. The State to argument before the Court of Appeals is March 21. The principal affidavit submitted by the District Attorney was the new one made by Marshall yesterday. The negro was called by the District Attorney's office ready to be called before Justice Weeks. The Justice, however, did not appear to think it was essential to question Marshall.

It seems to me that when an affidavit is submitted, it is a matter of course to absolutely clear as to leave no doubt of three things: Did he see Becker? Did he talk to him? Did he see a man talking with Becker? He says he did. Was one of those men Jack Rose, yes or no? He does not reply to any of these questions. Does any one question that Rose was there?"

"Why, yes," said Mr. Manton. "Three persons of Becker's squad saw Rose on that night."

And the witness Marshall said Rose was there, said Justice Weeks.

Now says he didn't know it was Rose, said Mr. Manton.

That's all, said the Justice's dry humor.

Delicate Argument. Assistant District Attorney Delaney argued against granting the motion for a new trial, informing the court that Marshall had made affidavits directly repudiating his testimony and asserting

ADVERSE REPORT ON P. S. C. FORECAST: WHITRIDGE RIDICULES ITS RULINGS



Mayor Mitchell and Frederick W. Whitridge (inset) testifying yesterday before the legislative committee investigating the Public Service Commission.

Continued from First Page.

Before he got through, however, he was worked up to a point where he insisted that the commission ought to be abolished and Col. Goethals brought here to build the subway.

"The former Commissioners," he said, "looked upon their new found power as a plaything. They were like a boy with a new pistol which they fired in every possible direction. The third avenue railroad was a mere shell when I received it, yet they began at once to pour forth the most impossible orders."

"One of the commission's orders is being violated every day by the surface lines and will continue to be in the future. I refer to the order compelling the company to provide seats to 100 per cent. in excess of passengers in every fifteen minute interval. They could not do this, and I don't know how they could do it."

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"Why, two or three years ago the commission had in its employ 347 engineers, while Col. Goethals on the great canal work had only 244, including roadmen."

"You think," interrupted the facetious Senator Thompson, "that it would be all right to put a Colonel in charge?"

Col. Hayward didn't seem to relish this reference to the reported intention of Gov. Whitman to make him chairman of the commission, but Senator Thompson added, "We have a Colonel right here, you know."

Mr. Whitridge promptly came back with this: "Better discharge him and get another. I believe from the nature of your questions," he added, addressing Mr. Hayward, "that you have an undue belief in the efficacy of orders directed to public service corporations."

The Colonel retorted by asking Mr. Whitridge if he was willing to have his own orders directed to public service corporations. "I am," said Mr. Whitridge, "but I am not willing to have my own orders directed to public service corporations."

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"A few years ago," he said, "business had become a scandal, causing ruin, disaster and disgrace. In the last ten years, I am glad to say, there has been a great ethical revival."

Before leaving the stand Mr. Whitridge apologized for his paucity of ideas, saying he might have done better if he had known earlier that he was to be a witness.

Mayor Mitchell at the outset expressed his firm belief in the necessity of a regulatory commission and his approval of the present public service law.

As the suggestion that constructive work should be transferred to the city government, he said, "I should not like to see it done now. We are rather heavily burdened already. But logical and from the home rule point of view, I believe that negotiating, planning, constructing and administering rapid transit lines ought to be done by the city government. If the transfer is to be made, I hope it will be by the new city charter on January 1, 1918. The Board of Estimate ought to be a separate body and determine plans and policies. Construction and administration should be handled by a city department under supervision of the executive."

The Mayor praised Commissioner Malin and had no criticism to make of the Public Service Commission. He said the salary of \$15,000 was not too much.

In his testimony Mr. McAneny said, "The construction work is proceeding satisfactorily. It is being efficiently done."

Mr. Commissioner Bassett's principal suggestion was that there should be one commission for the whole State, as the city commission was too busy supervising the building of subways to attend to regular work.

Mr. McAneny said: "The present law is adequate, but if the attitude of corporations is such that Mr. Whitridge has expressed, I think it well to arm the commission with teeth and broader powers."

Mr. Malin sent a letter to the committee yesterday saying that the record of the hearings at City Hall did not present a complete picture of the commission's work, that in his own case minor details had been emphasized and that any one reading the record would get an inadequate impression of the commission's achievements.

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APPEALS COURT SHUTS SUBWAY TO ALIEN LABOR

Continued from First Page.

rights of a State as an employer of labor. Other employers, individual or corporate, possess the individual right to withhold employment from whom they see fit. The constitution could hardly have been intended to deprive the State of equality with private employers in this respect.

"The statute is nothing more than a resolve by an employer as to the character of his employees, and an employer who communicates the resolve to his subordinates by written instructions or by word of mouth. The State, speaking through the Legislature, communicates the resolve to its agents by enacting a statute."

"Entire liberty of action in these respects is essential unless the State is to be deprived of a right which has heretofore been deemed a constituent element of the relationship of master and servant, namely, the right of the master to say who his servants shall (and therefore shall not) be."

APPEAL TO BE TAKEN.

Contractors Will Seek Relief in U. S. Supreme Court.

Now that the highest court in the State has upheld the alien labor law, the only chance of avoiding a serious building in public work under construction the contractors can see lies in an appeal to the United States Supreme Court and the granting of a writ of habeas corpus by a Supreme Court Justice.

Clarence A. Crane, secretary of the Contractors Association, who was arrested in the test case, and who is attorney for contractors, said that such an appeal would be made on a writ of error, and with the application for a stay will be a request to expedite the case.

If the Supreme Court affirms the decision of the Court of Appeals, the only remedy will be to appeal to the U. S. Supreme Court, but lawyers for the contractors have not pinned any of their hopes on its chances of passing.

Many Firms Hard Hit.

An immediate result of the decision, in the opinion of persons informed, may be the crippling of many firms building contracts on the dual subway system, firms which to be on the safe side will discharge much of their alien labor. With their contracts made on the basis of alien labor, they would be put to it to carry on the work with higher paid American workers.

The Public Service Commission was at sea when the decision was handed down and was not exactly sure just what it should or should not do in the matter of issuing vouchers for work already done.

"This decision marks a crisis in the construction of the dual system of rapid transit," said a statement issued by the commission. "The decision now has outstanding construction contracts aggregating \$142,000,000 for new subway and elevated roads. Some of these contracts are nearly completed, others are only just begun and others are in various intermediate stages of construction. There are about thirty separate contracting firms engaged in the work."

One of the important contracts is that of the new system on which work has been put off because of the pending labor case. It is that of the B. & O. Broadway line from Thirty-eighth street up to Fifty-ninth street. This will probably be held up for some time. It is definitely settled in the highest court.

Tunnel Work Affected. The commission authorized for bids on the section from Fifty-first street to Fifty-ninth street last December, but the bids were rejected a few weeks ago when the alien labor question came up and the work was suspended.

Much of the subway work has progressed to the stage where skilled labor is needed, as is the case with the tunneling on the East River from Whitehall street and Old Slip and the Interborough extension of the Seventh Avenue line. The work on the East River is now being done by the men employed on the sections as "muckers" are foreigners.

As the penalty for employing alien labor is fixed at \$100,000, the members of the Public Service Commission were in a quandary as to whether to employ the men or to employ the men already done. A conference has been held on that subject, but no decision arrived at.

Not only the subways are affected by the decision, but every public work of construction in the State will suffer—highways, large canal and public buildings. The work on the B. & O. Broadway line from Thirty-eighth street up to Fifty-ninth street. This will probably be held up for some time. It is definitely settled in the highest court.

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JAPAN NOT YELLOW PERIL—IYENAGA

Has Room Enough in Manchuria for Prospective Expansion.

USED 10 YEARS AS BOGEY

Frankness marked the end of yesterday's weekly talk at the Press Club after Dr. Tokiyuki Iyemaga of Waseda University, Japan, and later of the University of Chicago, had addressed the gathering on Japan's relations with this country. George R. Miner asked Dr. Iyemaga, "If Japan doesn't want the Philippines what does she want?"

Several others asked for the speaker's views on the situation in China. Dr. Iyemaga replied that in Manchuria his country has a territory twice as large as Japan and sufficient to provide her with ample room for expansion and development for an indefinite period to come. And he rounded both laughter and applause by remarking that the situation in China is not so serious as it is often represented.

"So long as we share with you the privilege of dwelling on the Pacific the Pacific is broad enough for us both. It is another fault of the Japanese that they stick too far ahead to look back. They want to get out and get acquainted with the people of the country we are in, learn their ways and customs, and then they want to go off from the world about us."

"Therefore I am counselling our people in Japan to assimilate themselves with the people of the United States. They must not go abroad with the idea of overrunning any other country. At present they get abroad as they make money. Then they go back home."

"They must not go where they are not liked, and where they are more welcome. We urge them not to come to California in any greater numbers. After all it is a small country, and California is the whole world."

The Japanese professor said that Japan has been used unnecessarily for the last ten years as a bogey whenever war scares were needed to swell army and navy appropriations. As a student at college here he saw England, Germany and the United States similarly used as a bogey to get more money for ships and forts and soldiers. The first ill feeling he traces to Gen. Kodama's speeches on war correspondence in the United States. It was intensified by Count Witte's anti-Japanese handling of the new paper men at Portsmouth. Most of the time he is in Japan, he thinks, and he says that maybe the Japanese Jingoism is slightly worse than ours.

Lately he has noted what he thinks is a distinct change for the better in the general tone of press comment in both countries. Of the present war he said, "Strange to say, the Kaiser, who painted first a yellow dragon spitting fire and then heralded to the world the yellow peril, is the same ruler who is now denouncing Europe with blood-strained fingers. The first sentence brought out strong applause, the second much laughter."

SUSPECTS WOMEN OF SPYING. Italian War Office Says Germans Sent Many From France.

Rome, Feb. 25.—The Italian War Office has sent confidential warnings to officers and soldiers to beware of attractive French speaking women who are now crowding the garrison towns.

It is reported they were sent here from France by the Germans purposely to do secret service work.

63 GENERALS IMPRISONED? Private Letter Says French Officers Shared in Army Craft.

Tientsin, Feb. 25.—That Gen. Joffre has imprisoned sixty-three French generals and high officers in southern France for alleged grafting is stated in a letter received here from Paris by the Rev. Peter Hylbes, Vice-General of this diocese.

Further Hylbes, who is a graduate of Leiden University, is the author of the letter